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ONE HUNDRED NINTH CONGRESS

Congress of the United States

House of Representatives

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INDEPENDENT

MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging
Threats, and International Relations

From: Christopher Shays
Chairman

Date: June 16, 2005

Subject: Briefing memo for the June 21st Subcommittee hearing

Attached find the briefing memo required by Committee rules for the
hearing on Tuesday, June 21st entitled, *The Development Fund for Iraq:
U.S. Management of Iraq Oil Proceeds and Compliance with U.N. Security
Council Resolution 1483*. The hearing will convene at 10:00 a.m., room
2154 Rayburn House Office Building, Washington, D.C.

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BERNARD SANDERS, VERMONT,
INDEPENDENT

June 16, 2005

MEMORANDUM

To: Members of the Subcommittee on National Security, Emerging Threats, and International Relations

From: J. Vincent Chase, Chief Investigator

Re: Briefing memo for the hearing entitled, *The Development Fund for Iraq: U.S. Management of Iraq Oil Proceeds and Compliance with U.N. Security Council Resolution 1483* scheduled for June 21, 2005 at 10:00 a.m. in room 2154 Rayburn House Office Building.

PURPOSE OF THE HEARING

To assess the efficiency and effectiveness of the processes used to meet U.S. obligations under United National Security Council Resolution (UNSCR) 1483 to manage revenues and expenditures of Iraqi oil sales (designated the "Development Fund for Iraq" as the successor account to the UN Oil-for-Food Program) transparently and for the benefit of the Iraqi people.

HEARING ISSUES

1. How has the U.S. complied with the terms of U.N. Security Council Resolution 1483?
2. What problems have been identified by U.S. and international auditors regarding the use of and controls over DFI funds and what is being done to address those problems?

BACKGROUND

The Development Fund for Iraq (DFI) is the successor to the United Nation's (U.N.) Oil for Food Program (OFF), which provided for the basic humanitarian needs of the Iraqi people while U.N. sanctions were in effect. The DFI was created to provide for Iraq reconstruction and humanitarian relief. The Coalition Provisional Authority (CPA) administered the DFI from May 22, 2003 through June 28, 2004.

Funding for the DFI initially came from the UN transfer of \$8.1 billion from the Oil for Food Program. During CPA's administration of the DFI, an additional of \$12.5 billion was deposited into the DFI account. These funds included proceeds from oil exports, interest income, repatriated funds and donations for a total DFI cash inflow of approximately \$20.6 billion during the period the fund was under CPA control. **(Attachment 1)**

On May 22, 2003, the United Nations passed U.N. Security Council Resolution 1483 **(Attachment 2)** formally transferring control of Oil for Food Program assets to the Development Fund for Iraq and placed the DFI under the authority of the Coalition Provisional Authority (CPA). **(Attachment 3)** In addition, the Resolution recognized the CPA as "the authority" to govern Iraq and granted the CPA discretion to disburse funds from the Development Fund for Iraq.

U.N. Resolution 1483 also shifted responsibility for oil and gas profits and their disbursal from the U.N. to the United States and its allies and mandated the Central Bank of Iraq as the repository into which oil and gas profits as well as other Iraqi assets would be deposited. However, while the Central Bank of Iraq holds the funds on its books, the U.S. Federal Reserve Bank of New York holds the corpus of the fund under an account for the Central Bank of Iraq/Development Fund for Iraq pursuant to CPA Regulation Number 2. **(Attachment 4)**

In May 2003, the Coalition Provisional Authority began administering the Development Fund for Iraq channeling revenue from Iraqi oil and gas sales, unencumbered Oil for Food (OFF) deposits, and repatriated Iraqi assets for Iraq reconstruction and relief efforts. U.N. Resolution 1483 required the United States to use "the Development Fund for Iraq in a

transparent manner for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq". (**Attachment 1, pg. 4**)

On June 8, 2004 the United Nations passed U.N. Security Council Resolution 1546, Article 24 (**Attachment 5**), returning control of assets held in the Development Fund for Iraq to the government of Iraq. On June 28, 2004, the Coalition Provisional Authority (CPA), dissolved, and sovereignty was returned to Iraq. The DFI is the primary funding mechanism for the operation of the Iraqi Interim Government (IIG). The total assets on hand at the time of the transfer were \$2.1 billion. (**Attachment 1**) U.S. assistance is now provided through the U.S. embassy.

Many reconstruction efforts paid for by DFI funding are underway, but security concerns have slowed progress considerably. DFI funding for approved relief and reconstruction projects has generally fallen into six major categories: (1) humanitarian and human services, (2) essential services, (3) security, (4) economic reconstruction, (5) governance, and (6) public buildings and other reconstruction. (**Web Resources 1**)

Most reconstruction funding is targeted at infrastructure projects including roads, sanitation, electric power, and oil production. Aid is also used to train and equip Iraqi security forces. A range of programs are in place to offer expert advice to the Iraqi government, establish business centers, rehabilitate schools and health clinics, provide school books and vaccinations.

International Advisory and Monitoring Board for Iraq (IAMB)

To ensure that the DFI was administered in compliance with U.N. Resolution 1483, the U.N. mandated the creation of the International Advisory and Monitoring Board (IAMB) to oversee United States stewardship of the DFI. (**Attachment 6**) The IAMB includes members representing the United Nations, the International Monetary Fund, the World Bank and the Arab Fund for Social and Economic Development. (**Web Resources 2**) To meet its oversight responsibilities the IAMB hired the independent auditing firm KPMG to audit the DFI. Beginning on March 17, 2004, IAMB officials began to raise questions about DFI fund transparency

and sought information about Kellogg, Brown & Root's (KBR) Restore Iraqi Oil (RIO) contracts because they were sole source contracts and used DFI funds to pay for Restore Iraqi Oil (RIO) contract task orders 5 through 10. **(Web Resource 3)**

On April 5, 2004, the IAMB requested CPA provide information on all sole-sourced contracts paid for using DFI funds and specifically asked for copies of audits relating to the Restore Iraqi Oil (RIO) contracts. **(Attachment 7)** After repeated requests, in October 2004 the IAMB was provided with redacted DCAA audits of the KBR Restore Iraqi Oil (RIO) contract task orders 5 through 10.

In October 2004, the Subcommittee began an oversight investigation of DFI contracting and reconstruction efforts. On October 5, 2004, the Subcommittee requested DOD forward DFI audits, documents, and financial records related to Iraqi reconstruction efforts. **(Attachment 8)** On November 15, 2004, DOD provided a partial response **(Attachment 9)** and redacted audits of the Restore Iraqi Oil (RIO) contract task orders 5 through 10. On March 15, 2005, the Subcommittee again requested in writing that DOD provide the unredacted audits of the Restore Iraqi Oil (RIO) contract task orders 5 through 10 originally requested in October 2004. **(Attachment 10)** On March 24, 2005, the Department of the Army delivered to the Subcommittee updated and revised unredacted DCAA audits of Restore Iraqi Oil contract task orders 5 through 10. **(Attachment 11)** The Defense Contract Audit Agency (DCAA) audits identified unsupported¹ and questioned costs² of \$264.3 million³ out of \$2.4 billion in total contract expenditures. **(Attachment 12)**

Office of the Special Inspector General for Iraq Reconstruction (SIGIR)

The Office of the Special Inspector General for Iraq Reconstruction (SIGIR) is the successor to the Coalition Provisional Authority Office of Inspector General (CPA-IG). Under the law that created

¹ Unsupported costs lack adequate support documentation to justify payment.

² Questioned costs have support documentation, but the auditor nevertheless concludes the cost is not fairly or reasonably attributed to the contract.

³ Defense Contract Audit Agency (DCAA) Restore Iraqi Oil (RIO) contract task orders 5 through 10 audit reports may contain proprietary information and are located in Subcommittee files.

CPA-IG, the office was to terminate six months after dissolution of the Coalition Provisional Authority, which occurred June 28, 2004. To maintain the oversight, Congress amended the law that had created the office of the CPA-IG, re-designating it as the Office of the Special Inspector General for Iraq Reconstruction⁴.

In January 2005, the Special Inspector General for Iraq Reconstruction issued a report entitled, *Oversight of Funds Provided to Iraqi Ministries through the National Budget Process*, Report Number 05-004. **(Web Resources 4)** According to the report, “From October 2003 through June 24, 2004, the CPA disbursed approximately \$8.8 billion in DFI funds through the national budget process for salaries, operating and capital expenditures, and capital projects.” **[(Attachment 1) (Web Resource 4)]** The report discusses CPA oversight of the DFI and specifically the distribution of DFI funds provided to interim Iraq government ministries. The purpose of the report was to determine whether the CPA had implemented adequate procedures for recording, reviewing, and reporting disbursements from the DFI in a transparent manner as required by U.N. Resolution 1483.

DISCUSSION OF HEARING ISSUES

How has the U.S. complied with the terms of U.N. Security Council Resolution 1483?

U.N. Resolution 1483 required the United States to use “the Development Fund for Iraq in a transparent manner to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq’s infrastructure, for the continued disarmament of Iraq, and for the costs of Iraqi civilian administration, and for other purposes benefiting the people of Iraq”.

If compliance with congressional requests is a measure of transparency, the Department of Defense has not adequately complied with U.N. Resolution 1483. As an example, the IAMB and the Subcommittee had to make repeated requests for unredacted audits, documents, and financial records related to Iraqi reconstruction efforts. And, in a June 2004

⁴ Ronald W. Reagan National Defense Authorization Act for 2005 (P.L. 108-375)

audit of DFI disbursements, KPMG noted that they had limited access to contracting procedures and documentation for contracts awarded by the U.S. Army Corps of Engineers (USACE). (**Attachment 13**)

In addition, in a September 8, 2004 statement, the IAMB auditors explained that they still had “not received reports on audits undertaken by various U.S. agencies on sole-source contracts, despite repeated requests. The IAMB expressed its strong concern with these delays that hamper fulfillment of its mandate under 1483. (**Web Resources 5**)

It appeared DOD did not alter or accommodate contracting systems to meet the extraordinary transparency requirements of U.N. Resolution 1483. The Subcommittee learned redactions to DCAA audits were made by the contractor KBR, not DOD. In a letter to the USACE, KBR stated all information considered to be a disclosure of proprietary policies, procedures, and accounting information had been redacted. (**Attachment 14**) In addition, KBR redacted statements of DCAA that the company believed were factually incorrect or misleading and could be used by a competitor to damage KBR’s ability to win and negotiate new work. As an example, in RIO Task Force Report 5, DCAA stated KBG, “did not demonstrate the prices for Kuwaiti fuel and transportation were fair and reasonable”. Some question how the redaction of this statement would damage the company’s ability to win and negotiate new work. It is also questionable whether KBR alone has the authority to make redactions of official DCAA audit reports.

According to national experts, conclusions by government auditors about contractor overcharges are not proprietary information that can be withheld under the Freedom of Information Act. Mr. J. William Leonard, the Director of the Information Security Oversight Office of the National Archives and Records Administration, testified at a Subcommittee hearing⁵ that he had never encountered a case in which the government has withheld as proprietary business information the actual amount a company overcharged the government, as determined by government auditors. Mr. Leonard said he would also be hard pressed to readily come up with a rationale for such a withholding. In addition, Harold C. Relyea of the

⁵ Subcommittee on National Security, Emerging Threats and International Relations, hearing entitled, *Emerging Threats: Overclassification and Pseudo-classification*, March 2, 2005, hearing transcript in Subcommittee files.

Congressional Research Service agreed,⁶ stating: “it’s hardly proprietary information.”

At a Subcommittee briefing for majority and minority staff held on June 15, 2005, DOD officials claimed the release of conclusions by government auditors about DFI contractor unsupported and questioned costs to the IAMB could be a criminal violation of the Trade Secrets Act.⁷

What problems have been identified by U.S. and international auditors regarding the use of and controls over DFI funds and what is being done to address those problems?

According to the SIGIR report entitled, *Oversight of Funds Provided to Iraqi Ministries through the National Budget Process*, the CPA provided less than adequate controls for approximately \$8.8 billion of Development Fund for Iraq (DFI) funds provided to Iraqi ministries. The CPA did not establish or implement sufficient managerial, financial, and contractual controls to ensure that DFI funds were transparent enough to indicate how the funds were used. In a sample review of ten disbursements made by the CPA Comptroller’s office, the SIGIR found that none of the disbursements included budget-spending plans. In addition, six disbursements were made without supporting documentation, and two disbursements worth \$616 million, were not supported by required disbursement vouchers.

According to the SIGIR, the CPA should have established controls and provided oversight over the financial management of the DFI precisely because there was no functioning Iraqi government, no experience within the Ministry of Finance in managing the national budget, no budget or personnel records, and the payroll systems were corrupted by cronyism and ad hoc fixes. Further, on an individual basis, any of these conditions should have sent strong signals to finance managers that weaknesses were widespread, posed unacceptable risks, and called for forceful action. Those weaknesses should have represented goals for corrective actions, not reasons for inaction.

⁶ Ibid.

⁷ 18 USC 1905.

The Defense Reconstruction Support Office strongly disagreed with the SIGIR report and stated the findings were not a basis for concluding that the CPA did not provide adequate stewardship of \$8.8 billion in DFI funds. He stated that the conclusions were sweeping and unqualified, did not accurately represent the CPA management of the DFI, and were not substantiated by the findings that related only to the CPA oversight of the execution of funds. He further stated the CPA disbursed DFI funds to the Iraqi ministries consistent with the published national budget, and the funds were allocated, disbursed, and used in a transparent manner for the benefit of the Iraqi people. **(Attachment 15)**

The Director believes the SIGIR report failed to account for the objectives of U.S. government policy to transfer responsibilities to Iraqis as soon as possible, which was consistent with international law and UN Security Council Resolutions. The CPA took the position that expenditures by Iraq ministries were to be managed by the Iraqis and overseen by Iraqi auditors, and the CPA realized that the only practicable approach was to assume a supervisory roll. Additionally, the Director commented that the security situation in Iraq made recruiting efforts extremely difficult and limited the assistance the CPA was able to provide to the Iraqi ministries in their budget execution.

The Director stated further that “the SIGIR report does not recognize the context in which the CPA was operating, to include the difficult circumstances under which the CPA operated and managed the DFI, the wartime security conditions, the CPA critical need to reestablish Iraqi ministries that had never functioned and/or ceased to function, the ministries lack of basic tools such as computers and telephone, and the constraints of a largely cash economy”.

The Professional Services Council (PSC), an association of government contractors, argues oversight must be considered in the context of working in the Iraq environment. They point out the financial realities include no cost accounting standards, an arcane and disconnected banking system including a cash-based environment lacking credit card and checking account systems. In addition, PSC argues Iraq lacks an adequate communication and infrastructure systems with phone service virtually non-existent and extremely limited Internet service, making Iraq an extremely difficult place to do business.

PSC has recommended changes in acquisition regulations to consider doing business in unusual locations such as Iraq, include contractor representatives in oversight community efforts, improve contract management training, coordinate better security in-theater with DOD, other agencies and contractors and, for forward deployed program offices, periodically re-baseline requirements and mission performance.

WITNESS TESTIMONY

PANEL ONE

Mr. Stuart W. Bowen, Jr., Special Inspector General for Iraq Reconstruction will testify about oversight of DFI funds.

Ms. Tina Jonas*, Under Secretary of Defense, Comptroller and Chief Financial Officer will testify about DFI audit reports and the Comptrollers involvement in DCAA report redactions.

Mr. William Reed*, Director, Defense Contract Audit Agency (DCAA) will testify about DFI audit reports and DCAA's involvement in DFI audit report redactions.

Colonel Emmett DuBose, Deputy Commander, U.S. Army Corps of Engineers will testify about DFI audit reports and redactions.

Mr. Howard Burris*, Director, Defense Support Office (DSO)-Iraq and Afghanistan will testify about DFI funds provided to Interim Iraqi Ministries.

PANEL TWO

Mr. Stan Z. Soloway, President, Professional Service Council (PSC) will Testify about Iraq contracting lessons learned.

Mr. Richard Garfield, Columbia University will testify about his experience with the CPA as a consultant the Interim Iraqi government Ministry of Health.

[*Invited]

ATTACHMENTS

1. Office of the Special Inspector General for Iraq Reconstruction, Oversight of Funds Provided to Iraqi Ministries through the National Budget Process, Report No. 05-004, January 30, 2005, Appendix F. CPA's Development Fund for Iraq Financial Reporting Matrix.

2. United Nations, Security Council, Resolution 1483, S/RES/1483 (2003), May 22, 2003.

3. CRS Report for Congress, *The Coalition Provisional Authority (CPA): Origin, Characteristics, and Institutional Authorities*, RL32370, Updated June 6, 2005, L. Elaine Halchin, Government and Finance Division.

4. *COALITION PROVISIONAL AUTHORITY REGULATION NUMBER 2*, L. Paul Bremer, Administrator, Coalition Provisional Authority, May 16, 2003.

5. United Nations, Security Council, Resolution 1546, S/RES/1483 (2004), June 8, 2004.

6. International Advisory and Monitoring Board (IAMB), *Statement of Purpose*, May 22, 2003.

7. Letter from Jean-Pierre Halbwachs, Chairman, International Advisory and Monitoring Board (IAMB) to Ambassador Paul Bremer III, Administrator, Coalition Provisional Authority dated April 5, 2004.

8. Letter from Congressman Christopher Shays and Congressman Waxman to Secretary of Defense Donald H. Rumsfeld dated October 5, 2004.

9. Letter from Powell A. Moore, Assistant Secretary of Defense (Legislative Affairs) to Congressman Christopher Shays dated November 15, 2004.

10. Letter from Congressman Christopher Shays to Secretary of Defense Donald H. Rumsfeld dated March 15, 2005.

11. Letter from Mr. Bernard P. Ingold, Deputy Chief Legislative Counsel, Department of the Army to Congressman Christopher Shays dated March 24, 2005.

12. Defense Contract Audit Agency (DCAA) briefing slide, May 3, 2005.
13. Management Comments, Defense Support Office-Iraq to the Office of the Special Inspector General for Iraq Reconstruction regarding *Oversight of Funds Provided to Iraqi Ministries through the National Budget Process*, Report Number 05-004, January 30, 2005.
14. Development Fund for Iraq, Report of Findings in Connection with DFI Disbursements for the period January 1, 2004 to June 28, 2004, pg. 17.
15. Letter from Michael Morrow, Contracts Manager, KBR to Gordon Sumner, Contracting Office, U.S. Army Corps of Engineers dated September 28, 2004 and letter from Michael Morrow, Contracts Manager, KBR to Gordon Sumner, Contracting Office, U.S. Army Corps of Engineers dated October 5, 2004.

WEB RESOURCES

1. GAO Report to Congressional Committees, *REBUILDING IRAQ: Resource, Security, Governance, Essential Services, and Oversight Issues*, GAO-04-902R, June 28, 2005. (Visited on June 13, 2005)
<<http://www.gao.gov/new.items/d04902r.pdf>>
2. International Advisory and Monitoring Board. (Visited on June 9, 2005)
< <http://www.iamb.info/>>
3. International Advisory and Monitoring Board, Minutes of Meeting, March 17-18, 2004 (Visited on June 15, 2005)
<<http://www.iamb.info/min/m031704.htm>>
4. Office of the Special Inspector General for Iraq Reconstruction, *Oversight of Funds Provided to Iraqi Ministries through the National Budget Process*, Report No. 05-004, January 30, 2005. (Visited on June 13, 2005) < http://www.sigir.mil/pdf/dfi_ministry_report.pdf>
5. International Advisory and Monitoring Board, Board Statement, September 8, 2004. (Visited on June 15, 2005)
<<http://www.iamb.info/pr/pr090804.htm>>

WITNESS LIST

PANEL ONE

Mr. Stuart W. Bowen, Jr.
Special Inspector General for Iraq Reconstruction
Department of Defense

Ms. Tina Jonas*, Under Secretary of Defense
(Comptroller) and Chief Financial Officer
Department of Defense

Mr. William Reed*, Director
Defense Contract Audit Agency (DCAA)
Department of Defense

COL Emmett DuBose, Deputy Commander,
U.S. Army Corp of Engineers
Department of the Army

Mr. Howard Burris*, Director
Defense Support Office (DSO)-Iraq and Afghanistan,
Office of the Secretary of Defense

PANEL TWO

Mr. Stan Z. Soloway, President
Professional Service Council (PSC)
Arlington, Virginia 22201-3009

Mr. Richard Garfield, Dr.PH./R.N.
Columbia University
New York City, New York

[*Invited]